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Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In The Matter of

IMPLEMENTATION OF THE LOCAL
 COMPETITION PROVISIONS IN THE
 TELECOMMUNICATIONS ACT OF 1996

CC DOCKET NO. 96-98;
 RM 9101

**COMMENTS OF THE
 TELECOMMUNICATIONS RESELLERS ASSOCIATION
 ON PETITION OF LCI INTERNATIONAL TELECOM CORP.
 AND COMPETITIVE TELECOMMUNICATIONS ASSOCIATION
 FOR EXPEDITED RULEMAKING**

The Telecommunications Resellers Association ("TRA"),¹ through undersigned counsel and pursuant to Section 1.405 of the Commission's Rules, 47 C.F.R. § 1.405, and Public Notice, DA 97-1211, released June 10, 1997, hereby submits its comments in support of the Petition for Expedited Rulemaking ("Petition") filed by LCI International Telecom Corp. ("LCI") and Competitive Telecommunications Association ("CompTel") in the above-captioned matter.

TRA urges the Commission to grant the Petition and initiate a rulemaking for the purpose of

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¹ A national trade association, TRA represents more than 500 entities engaged in, or providing products and services in support of, telecommunications resale. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect and further the interests of entities engaged in the resale of telecommunications services. Although initially engaged almost exclusively in the provision of domestic interexchange telecommunications services, TRA's resale carrier members have aggressively entered new markets and are now actively reselling international, wireless, enhanced and internet services. TRA's resale carrier members also are or will be among the many new market entrants that will soon be offering local exchange telecommunications services.

establishing reporting, performance and technical standards for incumbent local exchange carrier ("LEC") provision of operations support systems ("OSS") functions.

TRA agrees with Petitioners that insufficient efforts are being undertaken by incumbent LECs to fulfill their obligations pursuant to Section 251(c) of the Telecommunications Act of 1996 (the "Telecommunications Act") to "provide, upon request, access to OSS functions pursuant to an implementation schedule developed through negotiation or arbitration . . . and . . . by January 1, 1997, to offer nondiscriminatory access to OSS functions".² TRA further concurs with Petitioners that in the absence of tangible and quantifiable standards, uniformly applied, it is unlikely that incumbent LECs will work in cooperation with potential competitors toward actual fulfillment of the obligations so imposed by Section 251. Indeed, the absence of such standards works to the benefit of incumbent LECs by further delaying the advent of local competition. As the Commission has repeatedly admonished incumbent LECs, "providing access to OSS functions is a critical requirement for complying with section 251, and incumbent LECs that do not provide access to OSS functions, in accordance with the *First Report and Order*, are not in full compliance with section 251."³

Congress enacted the Telecommunications Act to speed the advent of a "pro-competitive, de-regulatory national policy framework" which would serve as a solid foundation for the competitive offering of telecommunications services by established companies and new enterprises alike. Toward that end, in the First Report and Order in its Local Competition proceeding, the Commission specifically recognized the importance of OSS access, holding that

² Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, (Second Order on Reconsideration) 11 FCC Rcd. 19738, ¶ 2 (1996).

³ Id. at ¶ 11.

"[m]uch of the information maintained in these systems is critical to the ability of other carriers to compete with incumbent LECs using unbundled network elements or resold services."⁴ Accordingly, the Commission imposed upon incumbent LECs the obligation to "provide nondiscriminatory access to their operations support systems functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing available to the LEC itself."⁵ Noting that "even the largest and most advanced incumbent LECs have not completed interfaces that provide such access to all of their support functions" the Commission nonetheless specified that "[i]ncumbent LECs that do not currently comply with this requirement of Section 251(c)(3) must do as expeditiously as possible, *but in any event no later than January 1, 1997.*"⁶ More than six months past that deadline, access to OSS functions remains little more than an illusory goal, half-heartedly embraced by some incumbent LECs and affirmatively ignored by others.

As the Petition notes, "[t]he OSS of an ILEC is the key element that allows for the pre-ordering, ordering, provisioning and many other vital functions of service".⁷ Similarly,

⁴ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499, ¶ 518 (1996), *motion for stay denied*, 11 FCC Rcd. 11754, *recon.* 11 FCC Rcd. 13042 (1996), *further recon.* 11 FCC Rcd. 19734 (1996), *further recon. pending, pet. for rev. pending sub nom. Iowa Utilities Board v. FCC (and consolidated cases), Case No. 96-3321, *et al.*, (8th Cir. Sept. 5, 1996), *partial stay granted* 109 F.3d 1418 (1996), *stay lifted in part* (Nov. 1, 1996), *motion to vacate stay denied* 117 S.Ct. 429 (1996).*

⁵ Id. at ¶ 523.

⁶ Id. at ¶¶ 524, 525 (emphasis added).

⁷ Petition at 3.

the FCC has described the adverse competitive impact of inferior access to operations support functions as follows:

[I]f competing carriers are unable to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for network elements and resale services in substantially the same time and manner that an incumbent can for itself, competing carriers will be severely disadvantaged.⁸

The Petition brings home forcefully not only the indisputable fact that all essential information relating to OSS functions currently resides with the incumbent LEC, but also that by refusing to share the necessary information and by erecting convoluted and conflicting procedural requirements, incumbent LECs are effectively precluding potential competitors from entering the local service market. The information disclosure measures advocated by Petitioners will be an integral element in the development of actual, functioning OSS interfaces capable of supporting emerging competitive local telecommunications services offerings. Without sufficient information upon which an accurate analysis of the level, quality and access to OSS functions which the incumbent LEC provides itself can be predicated, unsupported assertions that the dictates of Section 251 have been satisfied will remain merely the empty and self-serving assurances of incumbent LECs eager to retain their monopoly-like control of the local services market. Worse yet, without Commission intervention, incumbent LEC attempts to fulfill the requirements of Section 251 will never progress beyond this stage.

TRA agrees with Petitioners, therefore, that with respect to pre-ordering, ordering/provisioning, billing, and maintenance and repair, incumbent LECs must be compelled "to provide reports giving performance results on a monthly or shorter basis with sufficient

⁸ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499 at ¶ 518.

historical data to allow trending for the ILEC itself, all CLECs on average and the individual CLEC."⁹ TRA also believes that the establishment of "a single point of contact for ordering and provisioning resale service and unbundled elements"¹⁰ will greatly increase the efficiency of OSS functions and should be identified by the Commission as a high priority for incumbent LECs in documenting compliance with the dictates of Section 251. Of equal importance, however, will be the provision of updated, comprehensive electronic information concerning incumbent LEC USOCs, including a common language description. Exacerbated by the variation of USOCs from Bell Operating Company ("BOC") to BOC, the current unavailability of any reliable source for USOC data stands as a severe impediment to the ability of competitive LECs to accomplish even the most simple OSS-related functions. TRA also agrees that, coupled with the availability of a fixed file format and the ability of competitive LECs to electronically manipulate data received from incumbent LECs without the necessity of totally replicating that data manually, functions not currently supported by OSS interfaces, such information should significantly simplify the difficulties confronting competitive LECs as they attempt to utilize the primitive OSS interfaces currently touted by incumbent LECs as fully operational.

The Commission, tasked with securing, and then monitoring incumbent LEC compliance with Section 251, is in a position to compel, and should not hesitate to compel incumbent LECs to provide the above information. LCI has vigorously protested the conditioning of release by incumbent LECs of essential information on potential competitors' acquiescence to "gag rule" type restrictions. The characterization of these severe restrictions by incumbent LECs

⁹ Petition at 10, 12, 13, 16.

¹⁰ Id. at 11.

as mere voluntary compromises arising out of contractual negotiation among equals is plainly contradicted by the inherently coercive nature of the requisite concessions. In order to obtain the most basic, yet nevertheless indispensable information which is possessed only by the incumbent LEC, a competitive LEC must forego even the right to reveal such information to the Federal Communications Commission itself.

The demands of incumbent LECs for unqualified and absolute secrecy, in the absence of which the incumbent LEC will categorically refuse to release information essential to a competitor's ability to enter and survive in the local service market, should send a painfully obvious message to the Commission. Indeed, no clearer evidence could exist that incumbent LECs are actively resisting -- and absent compulsion by the Commission will continue to actively resist -- the provision of any information which could be utilized by competitors to gauge the veracity of sweeping, self-serving statements that the incumbent LEC is in compliance with the requirements of Section 251.

TRA notes that Petitioners request only information concerning the incumbent LEC itself, related information specific to the particular competitive LEC to whom the information is to be disseminated, and related information, in aggregate form, concerning the incumbent LEC's provision of OSS to all competitive LECs. The incumbent LEC can only demonstrate its provision of OSS functions on a nondiscriminatory basis by using as a baseline the performance data relating to its own access to, and quality of OSS capabilities; thus, the incumbent LEC is obligated to provide such information to competitive LECs utilizing its OSS functions. And as to the information related to the particular competitive LEC, no confidentiality concerns can arise by virtue of receipt by an entity of information concerning *that entity*. Inasmuch as Petitioners seek only aggregate information concerning other competitive LECs in order that a comparative

analysis may be undertaken, the revelation of such nonspecific competitive LEC information likewise raises no confidentiality concerns. TRA thus wholeheartedly agrees with Petitioners that "[t]here must also be no restrictions placed on the distribution of performance measurement data"¹¹ and that incumbent LECs must be prevented from "declar[ing] such measurements and corresponding data to be confidential information with limits on disclosure to other CLECs or even to this Commission."¹²

The Petition highlights another means by which an incumbent LEC can manipulate the information resting solely in its possession to dampen -- or eliminate -- the competitive threat posed by potential local service providers, namely, the unreasonable delay of invoices to competitive LECs for services obtained from the incumbent LEC. Petitioners advocate adoption of a policy pursuant to which "ILECs must provide a monthly invoice to CLECs for charges not more than 90 days preceding. Such a bill will be closed to further transactions (except audits) nine months after the bill date."¹³ Petitioners also urge that "if there is no resolution within a reasonable time (e.g., 120 days), [billing disputes] would have to be resolved via formal dispute procedures."¹⁴ TRA agrees that the prompt forwarding of invoices for both usage and connectivity charges will remain a matter of great concern to competitive LECs. Competitive carriers which cannot timely bill their end-user customers because no invoice has been received from an incumbent LEC will run the risk of losing those customers. Coincidentally, the only

¹¹ Id. at 24.

¹² Id.

¹³ Id. at 13.

¹⁴ Id. at 14.

service provider which possesses instantaneous access to billing information, and perhaps the likely replacement service provider, will be the incumbent LEC.

Like Petitioners, TRA agrees that some form of formal dispute resolution procedure is required. In determining the parameters of that procedure, however, TRA urges the Commission to be mindful of the lessons learned from the experience of interexchange carrier formal complaint proceedings. Necessarily plagued by the same difficulties encountered by virtually all adjudicatory mechanisms, the Commission's formal complaints process has historically been cumbersome and costly and as a result, has tended to favor those entities which are possessed of greater resources and which coincidentally stand to benefit from maintenance of the status quo. TRA thus urges the Commission to adopt a discrete, streamlined, highly-expedited complaint process for airing and resolving disputes brought by competitive LECs against incumbent LECs.

Finally, TRA believes the Petition identifies an appropriate measure against which the sufficiency of an incumbent LEC's OSS interface may be deemed satisfactory. Namely, to the extent an industry standard exists, that standard must have been adopted and implemented by the incumbent LEC. Petitioners further advocate as a standard for determining OSS interface sufficiency in the absence of such an industry standard the existence of a binding contractual commitment that such an industry standard will be adopted upon its development (including both contractual and regulatory penalties for failure to comply) and the offering and implementation of an interim solution which would allow competitive providers a comparable level of access to OSS systems as the incumbent LEC enjoys.¹⁵ Such a standard, while far from perfect, is

¹⁵ *Id.* at 22-23.

nonetheless an improvement over the current state of affairs, where incumbent LECs pay lip service at best to the Commission's directive that OSS access be provided by January 1, 1997. In TRA's opinion, however, the best solution to this latter situation would be the implementation by the Commission, after full and fair consideration of industry comment, of definitive OSS function standards.

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to grant the Petition of LCI and CompTel and initiate a rulemaking proceeding for the purpose of establishing reporting, performance and technical standards for incumbent local exchange carrier ("LEC") provision of operations support systems ("OSS") functions.

Respectfully submitted,

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July 10, 1997

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CERTIFICATE OF SERVICE

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